

Redistricting: Getting ready for 2021

March 2017

Last month U.S. Rep. Jason Chaffetz held a raucous town meeting that has been nationally publicized. Much of the audience response was to current events; however, some would say that the one of reasons for the crowd's frustration was a result of a 2011 law, *SB3002*, which established the lines of the four Utah congressional districts.

When the framers drew up the U.S. Constitution, they gave to the states the responsibility to determine the political boundaries of national and state offices. They also did not prepare for the development of political parties, something they hoped that the new nation would avoid. The constitutional model for legislative bodies — a lower body, which was based on population and an upper body based on equal representation — was replicated for a long time in the states. It did not take many years before political parties were formed and for political leaders to realize that political advantage could be gained by the way legislative districts are formulated. The term “gerrymandering” comes from a drawing of districts in Massachusetts in 1810. There, a Boston newspaper looked at the districts and combined the name of Gov. Elbert Gerry with the word “salamander” to come up with “gerrymander.”

Flash forward to 2016. Sophisticated data acquisition and computer programs that can collect information on party affiliation, income and education levels, and voting records by Census block have resulted in both political parties manipulating the system with these results:

- creating non-competitive, safe districts favoring incumbents who may not be responsive to their constituents
- creating safe districts where the races are competitive in the party primaries and the outcome is determined by the most ideological voters on either end of the political spectrum
- creating a dysfunctional Congress which, because of the reasons above, has little incentive to compromise
- preventing new leaders from emerging
- adding to public cynicism about government

At the national level in the past 50 years, voters have returned nine out of 10 incumbents to the House. In the Senate races, voters have returned more than 80 percent of the incumbents. By some estimates, only 15 of the 435 House races were competitive in 2016.

Frustrated by their political leaders placing their own interests over the common good, people (mostly within the party out of power) have turned to the U.S. Supreme Court for remedies. In 1962 in *Baker v Carr* the court rejected the argument that redistricting was a political issue and not subject to the courts. Two 1964 cases established the “one man, one vote” principle in redistricting cases. In *Reynold v Sims*, the court ruled that both chambers of state legislative districts had to be roughly equal in population. *Wesberry v. Sanders* did the same for congressional districts. The *Voting Rights Act* prohibited jurisdictions from drawing lines to favor racial groups. There have been several Supreme Court cases involving the racial compositions of congressional and state legislative districts.

Operation REDMAP and the 2011 state redistricting maps.

In his book *Ratf**cked: The True Story Behind the Secret Plan to Steal America's Democracy*, David Daley reports that after the 2008 election, a group of Republican strategists came up with a bold plan — control the redistricting in states thereby controlling Congress and state legislatures for the next

decade. The plan, REDMAP (Redistricting Majority Project) aided by the decision in *Citizens United* resulted in “the most strategic, large-scale and well-funded campaign ever, to redraw the political map coast to coast, with the express goal of locking in Republican control of the U.S. House of Representatives and state legislative districts for the next decade or more. Until this point, gerrymandering had been a tool to enhance a incumbent's chances of reelection or shiv a political enemy. Call it the gerrymandering's shock-and-awe campaign.” The 2012 election results showed their success: for the first time since 1972 the party with the most votes did not win the most House seats.

Similar results were reported in Utah State Legislature. There were 24 uncontested races in the three election cycles prior to the 2011 redistricting and there have been 73 uncontested races in the three cycles since.

Utah Redistricting in 2011 in two paragraphs

The Utah Constitution gives the responsibility of redistricting solely to the Legislature.

The most controversial part of the 2011 redistricting process in the Utah Legislature was that of drawing the congressional districts with the addition of a fourth seat for Utah.

Although there is nothing in the Utah codes that establishes principles and procedures, the 2011 Legislature established procedures and principles at the beginning of the process. The guidelines (<http://bit.ly/2mfHAdG>) included open meetings, the public's right to obtain copies of written material and prohibition of political data to be used discussion and in computer programs. The principles (<http://bit.ly/2nthIMo>) included strict limits on the deviation of population of districts and the requirement that districts be compact and “reasonably contiguous.” There was no mention of communities of interest, protection of minorities, and protection of municipal and county boundaries.

The Redistricting Committee (16 Republicans, six Democrats) held 18 public hearings and provided software so that the public could experiment with drawing the lines. In the end, the final decisions were discussed in closed Republican caucuses. Salt Lake County was too large to be included in a single congressional district, so the question became one of how to divide Salt Lake County. The result was that Salt Lake City was included in a single district but Holladay City residents were divided into three congressional districts. Michael Barone and Chuck McCutcheon, writing for *The Almanac of American Politics*, described the 2010 congressional redistricting cycle in Utah as follows:

Republicans’ safe play in 2010 would have been to create one solid Democratic district ... in Salt Lake City — a “doughnut hole” — and simply draw a safe new Republican seat somewhere else.

But for decades, many Utah Republicans have argued, in their party’s interest, that all the state’s districts should contain both urban and rural areas, splitting Salt Lake City like a “pizza pie.” The doughnut-versus-pizza debate raged on in 2011, and at a hearing one rural voter even complained she didn’t want a “pie in the face.” In October, after lengthy debate and some Republican internal bickering, the state House and Senate reached agreement and passed a map: The new 4th District would be a “doughnut hole,” but it would consist of heavily Republican suburbs south of Salt Lake City and the northern reaches of prohibitively Republican northern Utah County. (Then Rep. Jim) Matheson’s re-jiggered 2nd District would continue to stretch to the state’s southwestern corner.

League positions and history of redistricting efforts in Utah

The League of Women Voters of the U.S. and the Utah League have positions on redistricting. In 2016 the U.S. League adopted by concurrence the report of a national task force with state leagues' experiences represented.

The LWVUS position is:

Support redistricting processes and enforceable standards that promote fair and effective representation at all levels of government with maximum opportunity for public participation.

The full position is found at: <http://bit.ly/2nd8kk4>

Perhaps the most important part is found in the first statement:

1. Responsibility for redistricting preferably should be vested in an independent special commission, with membership that reflects the diversity of the unit of government, including citizens at large, representatives of public interest groups, and members of minority groups.

The Utah League studied redistricting in 1980, after Utah was given a third congressional seat. The position includes strict anti-gerrymandering standards and support of a bipartisan advisory committee. Specifically the League's position includes:

- *prompt judicial review*
- *basic equality among districts*
- *district lines that honor local political boundaries*
- *district lines that are compact*
- *district lines that are not drawn for the purpose of advantage or disadvantage of any political party, incumbent, or any person or group lines that do not dilute voting strength of any minority*
- *addresses of incumbents, political affiliation of registered voters, previous election returns, or demographic information other than population should not be used in redistricting.*

The League supports establishing a bipartisan commission that would serve in an advisory capacity to the Legislature.

The Legislature would approve a final plan that would be subject to approval by the courts.

The League supports an amendment to the Utah Constitution, Article IX, Sec. 1-4, to bring it into line with present practice.

The Utah League has been involved in every redistricting event, including the abortive attempt to get a fourth seat and giving Washington, D.C., a congressional seat in 2005. The League supported the Fair

Boundaries Initiative in 2010, which failed to get enough signatures to be placed on the ballot.

Possible remedies for partisan gerrymandering

As long as legislators are in charge of choosing their voters, redistricting will always be political. In states where Democrats are in control, districts can be drawn to favor them. The REDMAP plan was very successful in getting the dominant party elected but its success in governing the country has yet to be determined. Many political analysts speculate that it will take at least a decade before we see competitive districts and a more functional Congress. The Democrats, late to the game, have established the National Democratic Redistricting Committee which will coordinate campaign strategy, direct fundraising, organize ballot initiatives and develop legal challenges to state redistricting maps, with former Attorney General Eric Holder as chairman. For good government groups such as the League, parity between the two political parties in the redistricting process does not necessarily benefit citizens.

There have been generally two types of responses to partisan gerrymandering: lawsuits and the creation of independent or advisory commissions.

In a series of cases, the Supreme Court of the United States has examined wrestled with partisan gerrymandering without prohibiting it. Most of the cases have focused on violations of Article I and 14th Amendment. The Supreme Court justices had difficulty agreeing on a clear standard for cases to be justiciable. However, in a 2004 case, *Vieth v. Jubelirerm*, Justice Anthony Kennedy wrote in a concurring opinion that extreme partisan gerrymandering might be unconstitutional, but that there were no current “manageable standards.” He expressed a hope that some standard might emerge in the future. A current Wisconsin case, *Whitford v. Nichol*, may provide a standard. In this case, a lower court accepted the plaintiff’s argument that partisan gerrymandering could be proven by the efficiency gap, a statistical measurement. Several other methods, mostly mathematical, to determine partisan gerrymandering have been suggested by other groups.

The concept that citizen interest is best protected by an independent body or commission is used by several states. Some states utilize an independent body to draw lines for congressional, state legislative bodies and other governing bodies such as school boards. Other states use them for only one or another. In most cases, the commissions have been created by citizen initiatives, either by direct vote or by a legislature acting with the threat of a ballot. California voters approved in 2008 an initiative to form the A Citizen's Redistricting Commission for state legislative offices. In a 2010 law, the commission's role was expanded to include congressional districts. The League of Women Voters of California was part of the group backing the 2018 initiative with LWVUS President Chris Carson taking an active role.

A third option might exist for a more representative Utah congressional delegation. Fair Vote has proposed a multi-district ranked-choice model. Under this plan, a multi-winner district composed of three or more districts would replace the winner-take-all single-winner districts. In the multiple winner

districts, the winners would be chosen by ranked-choice voting. In each multi-winner district three, four, or five winners would be selected by ranked-choice voting. Fair Vote notes that in each district, the majority would elect most of the seats, but voters outside the majority could elect their fair share too. That means that nearly every voter would have a representative they supported and helped elect. See <http://bit.ly/2nsZVF2>.

Utah 2017 — Redistricting has become a “sexy issue”

Since January, Utah citizens have formed several groups to look at the issue of partisan gerrymandering focusing on both lawsuits and an initiative to form an advisory redistricting commission. Two formal groups have been organized: The **Utah Fair Redistricting Caucus** is focusing on the lawsuit approach and another group — **Utahns for Responsive Government** — is focusing on an initiative to create an independent advisory commission. There is a third informal group, the **Utah Redistricting Coalition**, which has met to talk about redistricting reform. Several organizations including the League, Alliance for a Better Utah, Utah Citizens Council, Utah League of Independent Voters, and Represent Me Utah are also involved in these discussions. It should be mentioned at the outset that both the legal and the initiative approach require large amounts of money to be raised by the respective groups.

The Utah Fair Redistricting Caucus has several attorneys working pro bono to determine whether a case has merit. At the moment they are looking at the efficiency gap as applied to Utah. They are looking at the Wisconsin case closely. An explanation of the efficiency gap can be found at <http://bit.ly/2IMUzU2>. If the Supreme Court decides the Wisconsin case favorably and sets some standards, and if Utah can litigate on those standards, there is still a remedy to be considered: Should redistricting be remanded to the Utah Legislature or should a judge be charged?

The Utah for Responsive Government group is focusing on an initiative to create an advisory commission. Details are not available yet. They estimate they will need 143,000 signatures for the initiative to be placed on the ballot. They will concentrate on the incumbency issue. In a July 2015 poll for Utah Policy (<http://bit.ly/2lQTQpC>), 65 percent of those polled believe that an independent commission should draw the lines for congressional redistricting.

Whether one or both efforts are successful, it is clear that Utah citizens cannot depend on their Legislature to upset the status quo. Several actions by the 2017 Legislature make it clear.

- HJR1 which proposed redistricting standards passed the House unanimously but was defeated in the Senate Government Operations Committee 4-2. Senators from rural districts were opposed.
- HB411 which proposed an independent advisory redistricting commission was never released from the Rules Committee.
- HB403 which would have allowed electronic signatures on petitions languished in the Rules Committee.

There is another issue evident in both the discussions of the 2011 congressional redistricting and the 2017 Senate Government Operations Committee discussion of *HJR18* — the underlying belief that urban areas do not reflect rural interests and are somehow less representative of the values of Utah voters.

A Utah success story: Salt Lake County redistricting in 2011

In the past when League members have lobbied Utah legislators in favor of an independent advisory commission, they have been met with the argument that redistricting is political and that there is no way that an independent advisory commission would be not be political. Utah does have a success story with an independent advisory commission and that should be referenced to those who are skeptical.

In 2011, Salt Lake County appointed a seven-member advisory committee (no more than three could be of one political party) to help in redrawing the Salt Lake County districts and the Canyons, Granite and Jordan School Districts. The committee presented three options to the council, two of which placed Councilman David Wilde in Councilwoman Jani Iwamoto's district. In a 6-1 decision, the council voted to choose the one that left the incumbents in their separate districts. Ironically, the former councilman who had proposed the commission idea spoke in favor of the successful incumbent retaining map. In the end, the decision was political, but the council chose between the options the commission presented rather than making a map on their own, and the deliberative process was open.

2017 promises to be an exciting year for citizens interested in non-partisan issues.

